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Before the
Federal Communications Commission
Washington, D.C. 20554

DISPATCHED BY

In the Matter of)	
)	
National Exchange Carrier)	CC Docket No. 99-316
Association, Inc.)	RM 9486
)	
Petition to Amend Section 69.3 of)	
the Commission's Rules)	
)	

ORDER AND NOTICE OF PROPOSED RULEMAKING**Adopted: October 21, 1999****Released: October 22, 1999**

Comment Date: November 22, 1999

Reply Comment Date: December 7, 1999

By the Commission:

I. INTRODUCTION

1. In this Order and Notice of Proposed Rulemaking, we grant the National Exchange Carrier Association, Inc.'s ("NECA's") petition for rulemaking¹ and seek comment on our proposal to shorten the current required notice period for changes in participation in NECA's access tariffs. Specifically, we propose to change the carrier election deadline for participation in association tariffs from December 31 of the previous year to March 1 of the tariff year.

II. BACKGROUND

2. Section 69.3 of the Commission's rules governs the filing of access service tariffs.² Under this section, NECA is responsible for filing an access service tariff as agent for all telephone companies that participate in the association tariff. Under section 69.3, the association tariff is to be filed on 90 days notice with a scheduled effective date of July 1. To provide NECA with sufficient notice, carriers are currently required to notify NECA of any change in their association tariff participation by December 31 of the year preceding the filing of the tariff.

¹ *National Exchange Carrier Association, Inc.*, Petition for Rulemaking, RM 9486 (filed Feb. 8, 1999) ("NECA Petition").

² 47 C.F.R. § 69.3.

3. In 1997 the Commission streamlined its tariff filing rules, allowing carriers to file their annual access tariffs on 15 days notice.³ The streamlined notice requirement applies to NECA's association access service tariff, allowing NECA to file the tariff on June 16, rather than on April 2, for an effective date of July 1. In addition to the streamlined notice period, NECA now employs electronic data collection and processing routines that were not in use when section 69.3 was adopted. These more efficient data collection techniques significantly reduce the time required to assemble and analyze data for NECA's tariff filing. According to NECA, the tariff streamlining rules and improvements in data collection management eliminate the need for carriers to provide six months advance notice to NECA of planned tariff participation changes.⁴

4. In its petition for rulemaking filed on February 8, 1999, NECA requested that the Commission amend section 69.3 of its rules to allow carriers to notify NECA of their tariff participation changes by March 1 of the tariff year instead of requiring notification by December 31 of the preceding year. The petition appeared on Public Notice on February 24, 1999, and two parties, the National Telephone Cooperative Association ("NTCA") and the United States Telephone Association ("USTA"), filed comments in response to the petition on March 26, 1999. Both NTCA and USTA supported NECA's request.

III. DISCUSSION

5. We hereby grant NECA's petition for rulemaking. We agree with NECA that changes in tariff notification periods and advancements in data collection and processing methods may warrant a shorter timeframe for carriers to provide notice of tariff participation changes. In addition, as NECA noted in its petition, shorter notice periods will not disadvantage NECA and may help smaller companies make better-informed decisions regarding tariff participation. For instance, because the deadline by which NECA must file proposed revisions to its average schedule formulas is December 31, companies that rely on these formulas to compute interstate access compensation will have more time to analyze the proposed revisions before deciding whether to participate in NECA's access tariff.

6. Therefore, we propose to amend Part 69 of our rules to allow carriers until March 1 of each tariff year to notify NECA of any changes in tariff participation. We seek comment on this proposed change.

7. In the alternative, NECA suggested that the Commission eliminate its requirement that companies notify NECA of changes in their tariff participation. According to NECA, elimination of this requirement will ease the Commission's administrative burden of reviewing applications for special permission filed by carriers that seek waiver of the tariff election deadline. NECA also noted that the Commission's objective of providing NECA ample time to develop annual access rates may be better served by allowing the association to develop internal procedures, which could be adjusted to meet special circumstances. We also seek comment on this proposal.

³ *Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, Report and Order, 12 FCC Rcd 2170, 2188 (1997).

⁴ See *NECA Petition* at 2.

IV. ADMINISTRATIVE MATTERS

A. *Ex Parte* Presentations

8. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b). *Ex parte* presentations are permissible if disclosed in accordance with Commission Rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. See 47 C.F.R. § 1.1206(b)(2). Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

B. Initial Paperwork Reduction Act Analysis

9. This Notice of Proposed Rulemaking ("NPRM") contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget ("OMB") to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 *et seq.* Public and agency comments must be filed by the same filing deadlines as comments on this NPRM; OMB comments are due 60 days from the date of publication of this NPRM in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

C. Initial Regulatory Flexibility Act Analysis

10. As required by the Regulatory Flexibility Act ("RFA"),⁵ the Commission has prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules proposed in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM, as stated in Paragraph 21 of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the RFA.⁶ In addition, the NPRM and the IRFA (or summaries thereof) will be published in the Federal Register.

⁵ See 5 U.S.C. § 603. The RFA, 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 10 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").

⁶ See 5 U.S.C. § 603(a).

Need for and Objectives of the Proposed Rules

11. As discussed above, NECA has asserted that changes in tariff notification periods and advancements in data collection and processing methods have facilitated NECA's ability to prepare association tariffs. Therefore, NECA can receive notifications from carriers changing the status of their association tariff participation closer to the tariff filing deadline. At NECA's request, the Commission is proposing to amend its rules to extend the deadline by which carriers must notify NECA of changes in association tariff participation. Specifically, the notification deadline would be changed from December 31 of the preceding year to March 1 of the tariff year. This extension of the notification deadline will provide carriers additional time to determine their tariff participation status, thus allowing them to make more informed tariff participation decisions.

Legal Basis

12. The proposed action is authorized under sections 1, 4(i), 4(j), 201-205, and 303 of the Communications Act of 1934, as amended.⁷

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

13. The RFA requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."⁸ The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁹ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹⁰ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").¹¹

⁷ 47 U.S.C. §§ 151, 154(i), (j), 201-205, and 303.

⁸ 5 U.S.C. § 605(b).

⁹ *Id.* at § 601(6).

¹⁰ *Id.* at § 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

¹¹ Small Business Act, 15 U.S.C. § 632.

14. In this IRFA, we consider the potential impact of the NPRM on all local exchange carriers ("LECs") that could consider participating in NECA's association tariffs. Neither the Commission nor the SBA has developed a definition for small LECs. The closest applicable definition under the SBA rules is for Standard Industrial Classification ("SIC") category 4,813, telephone communications companies other than radiotelephone (wireless) companies.¹² For this category, the SBA has defined a small business to be a small entity having no more than 1,500 employees.¹³

15. We have included small incumbent LECs in the present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."¹⁴ The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.¹⁵ Although we have included small incumbent LECs in this RFA analysis, we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

16. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Carrier Locator: Interstate Service Providers Report* ("Locator").¹⁶ This report was compiled using information from Telecommunications Relay Service ("TRS") fund worksheets filed by carriers, including, *inter alia*, LECs, competitive local exchange carriers, interexchange carriers, competitive access providers, satellite service providers, wireless telephony providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

17. There are two principle providers of local telephone service; incumbent LECs and competing local service providers. However, under section 69.3 of the Commission's rules, participation in NECA's access service tariffs is limited to incumbent LECs,¹⁷ therefore the proposed

¹² 13 C.F.R. § 121.201.

¹³ *Id.*

¹⁴ 5 U.S.C. § 601(3).

¹⁵ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b). Since 1996, in *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996), out of an abundance of caution for RFA purposes, the Commission has included small incumbent LECs in its regulatory flexibility analyses.

¹⁶ FCC, *Carrier Locator: Interstate Service Providers* at 1 (Jan. 1999).

¹⁷ See 47 C.F.R. § 69.2(hh).

rule changes will not affect competing local service providers. According to the most recent *Locator* data, 1,410 filers identified themselves as incumbent LECs.¹⁸ Data set forth in the FCC *Preliminary Statistics of Communications Common Carriers* ("SOCC") lists 32 incumbent LECs that have more than 1,500 employees.¹⁹ We do not have data specifying the number of these carriers that are either dominant in their field of operations or are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of incumbent LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,378 incumbent LECs are small entities that may be affected by the proposed rules, if adopted.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

18. An Initial Paperwork Reduction Act analysis is contained at Paragraph 9 of the NPRM. This NPRM seeks comment on a proposed extension of the date by which carriers must notify NECA of changes in participation in association tariffs. Under the current rules this notification must be provided six months prior to the effective date of the tariff, by December 31 of the preceding year. The Commission proposes to allow carriers until March 1 of the tariff year to provide the required notification to NECA. The NPRM also seeks comment on an alternative proposal to eliminate the Commission notification rule and allow NECA to adopt internal procedures governing tariff participation notification.

Steps taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

19. The rule amendments we propose in the NPRM are designed to assist all carriers in making their association tariff participation elections. The proposed extension of the notification date from December 31 to March 1 may particularly benefit smaller carriers that rely on average schedule formulas to compute interstate access compensation, because NECA is required to file proposed revisions to these schedules by December 31. The extension of the tariff election deadline will provide carriers more time to analyze NECA's proposed revisions before making tariff participation decisions. We seek comment on our tentative conclusions and proposals, and on additional actions we might take in this regard.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

20. There are no federal rules that may duplicate, overlap, or conflict with the proposed rules.

D. Filing of Comments and Reply Comments

21. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before November 22, 1999 and reply comments on

¹⁸ See *Locator* at Fig. 1.

¹⁹ *Preliminary Statistics of Communications Common Carriers* (1998 ed.) at Table 2.9.

or before December 7, 1999. Comments may be filed using the Commission's Electronic Comment Filing System ("ECFS") or by filing paper copies.²⁰

22. Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Only one copy of electronically-filed comments must be submitted.

23. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Room TW-B204, Washington, D.C. 20554.

24. Parties who choose to file by paper should also submit their comments on diskette. The diskette should be submitted to: Wanda Harris, Federal Communications Commission, Common Carrier Bureau, Competitive Pricing Division, 445 12th Street, S.W., Fifth Floor, Washington, D.C. 20554. The submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labelled with the commenter's name, proceeding (including the docket number in this case (CC Docket No. 99-xx)), type of pleading (comments or reply comments), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase: "Disk Copy - Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554.

25. For additional information on this proceeding, please contact Jennifer McKee, Common Carrier Bureau, Competitive Pricing Division at (202) 418-1520 or jmckee@fcc.gov.

V. ORDERING CLAUSES

26. Accordingly, **IT IS ORDERED** that the Petition for Rulemaking filed by NECA IS **GRANTED**.

27. **IT IS FURTHER ORDERED** that, pursuant to the authority contained in sections 1, 4(i), 4(j), 201-205, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), (j),

²⁰ See *Electronic Filing of Documents in Rulemaking Proceedings*, Report and Order, 13 FCC Rcd 11322 (1998).

201-205, and 303, **NOTICE IS HEREBY GIVEN** of the rulemaking described above and that **COMMENT IS SOUGHT** on those issues.

28. **IT IS FURTHER ORDERED** that the Commission's Office of Public Affairs, Reference Operations Division, **SHALL SEND** a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act, 5 U.S.C. § 605(b).

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script, reading "Magalie Roman Salas".

Magalie Roman Salas
Secretary

APPENDIX A

PROPOSED AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS

PART 69 - ACCESS CHARGES

1. Revise Section 69.3(e) as follows:

* * * * *

(6) A telephone company or companies that elect to file such a tariff shall notify the association not later than March 1 of the year the tariff becomes effective, if such company or companies did not file such a tariff in the preceding biennial period or cross-reference association charges in such preceding period that will not be cross-referenced in the new tariff. A telephone company or companies that elect to file such a tariff not in the biennial period shall file its tariff to become effective July 1 for a period of one year. Thereafter, such telephone company or companies must file its tariff pursuant to paragraphs (f)(1) or (f)(2) of this section.

* * * * *

(9) A telephone company or group of affiliated telephone companies that elects to file its own Carrier Common Line tariff pursuant to paragraph (a) of this section shall notify the association not later than March 1 of the year the tariff becomes effective that it will no longer participate in the association tariff. A telephone company or group of affiliated telephone companies that elects to file its own Carrier Common Line tariff for one of its study areas shall file its own Carrier Common Line tariff(s) for all of its study areas.

* * * * *

2. Revise Section 69.3(i) as follows:

* * * * *

(1) In addition to the withdrawal provisions of paragraphs (e)(6) and (9) of this section, a telephone company or group of affiliated telephone companies that participates in one or more association tariffs during the current tariff period and that elects to file price cap tariffs or optional incentive regulation tariffs effective July 1 shall notify the association by March 1 that it is withdrawing from all association tariffs, subject to the terms of this section, to participate in price cap regulation or optional incentive regulation.

* * * * *

3. Revise Section 69.3(j) as follows:

A telephone company or group of affiliated telephone companies that participates in an association tariff and elects to file its own tariff pursuant to paragraph (a) of this section shall notify the association not later than March 1 of the tariff year that it will no longer participate in that association tariff.

